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26 LINDA J. WHITE, M.D.

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JAMES FLAVY COY BROWN, on behalf of
himself and all those similarly situated,

Plaintiffs,

vs.

RAWSON-NEAL PSYCHIATRIC HOSPITAL;
LEON RAVIN, M.D., associate medical director,
in his individual and official capacities; ANURAG
GUPTA, M.D., psychiatrist at RAWSON-NEAL
PSYCHIATRIC HOSPITAL, in his individual and
official capacities; SOUTHERN NEVADA
ADULT MENTAL HEALTH SERVICES
(SNAMHS), a mental health treatment operation
licensed by the State of Nevada; CHELSEA
SZKLANY, hospital administrator for SNAMHS,
in her official capacity; NEVADA BUREAU OF
HEALTH CARE QUALITY AND
COMPLIANCE (BHCQC), the licensing
authority; DEFENDANT JOHN DOE 1, Bureau
Chief for BHCQC, in his official capacity;
NEVADA DIVISION OF HEALTH, DIVISION
OF MENTAL HEALTH & DEVELOPMENTAL
SERVICES (MHDS); RICHARD WHITLEY,
administrator for MHDS, in his official capacity;
NEVADA DEPARTMENT OF HEALTH AND
HUMAN SERVICES, a department of the State of
Nevada, and its Director, Mike Willden, in his
official capacity; LINDA J. WHITE, Statewide
Psychiatric Medical Director, in her individual and
official capacities; CENTERS OF MEDICARE
AND MEDICAID SERVICES; JOHN DOE 2,
director of CMMS, in his official capacity; JOHN
DOE 3, in his capacity of social worker; and Does
4 to 50.

Defendants.

Case No. 2:13-cv-01039-JCM-PAL

**[PROPOSED] STIPULATED
DISCOVERY PLAN AND SCHEDULING
ORDER**

**SPECIAL SCHEDULING REVIEW
REQUESTED**

Pursuant to Local Rule 26-1(d), the parties submit the following Stipulated Discovery Plan and Scheduling Order and request special scheduling review by the Court, because deadlines longer than those set forth in Local Rule 26-1(e) are proposed herein.

Plaintiff filed his complaint on June 11, 2013. ECF Doc. 1. State Defendants filed a Motion to Dismiss or in the Alternative a Motion for More Definite Statement on July 12, 2013. ECF Doc. 10. Plaintiff filed an Amended Complaint on July 26, 2013. ECF Doc. 13. Plaintiff opposed the State Defendants' Motion to Dismiss or in the Alternative a Motion for More Definite Statement on July 29, 2013. ECF Doc. 15. Defendant White filed a joinder in the Motion to Dismiss on

1 August 1, 2013. ECF Doc. 17. State Defendants filed a Reply to Plaintiff's Opposition on August
 2 7, 2013, and take the position that the amended complaint does not cure the deficiencies that they
 3 allege. ECF Doc. 18. Plaintiff filed a response to Defendant White's Joinder on August 9, 2013.
 4 ECF Doc. 19.

5 The Court has not yet ruled on the pending motion.

6 Defendants Jonathan Blum and Centers of Medicare and Medicaid Services ("CMMS") are
 7 not a party to this stipulation because they were served via mail on July 31, 2013. Government
 8 entities have 60 days to respond, making their response due on September 30, 2013.

9 **I. FEDERAL RULE OF CIVIL PROCEDURE 26(f)(3)**

10 a) **What changes should be made in the timing, form, or requirement for**
 11 **disclosures under Rule 26(a), including a statement of when initial disclosures**
were made or will be made.

12 The timing of disclosures under Rule 26(a) appears below. The parties will exchange initial
 13 disclosures on **September 23, 2013.**

14 b) **The subjects on which discovery may be needed, when discovery should be**
 15 **completed, and whether discovery should be conducted in phases or be limited**
to or focused on particular issues.

16 Because this matter is filed as a class action lawsuit, in addition to discovery relating
 17 directly to Plaintiff Brown, class-based discovery must be conducted, including discovery related
 18 to the ascertainability, typicality, and common questions of law or fact related to the class under
 19 Rule 23. This action has the potential to encompass a class of thousands of previous patients of
 20 Rawson-Neal Psychiatric Hospital. For that reason, it is likely that extensive discovery will be
 21 necessary, necessitating extended discovery deadlines. Plaintiff proposes a discovery cut-off date
 22 of **June 30, 2014.**

23 c) **Any issues about disclosure or discovery of electronically stored information,**
including the form or forms in which it should be produced.

24 None at this time.
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- 1 **d) Any issues about claims of privilege or of protection as trial-preparation**
 2 **materials, including—if the parties agree on a procedure to assert these claims**
 3 **after production—whether to ask the court to include their agreement in an**
 4 **order.**

5 Plaintiff acknowledges the potential private and sensitive nature of medical records to be
 6 requested and disclosed by Defendants. Plaintiff is willing to stipulate to the issuance of a
 7 protective order prior to disclosure of information relating to putative class members including
 8 their discharge documents and their medical records.

- 9 **e) What changes should be made in the limitations on discovery imposed under**
 10 **these rules or by local rule, and what other limitations should be imposed.**

11 Rule 30(a)(2)(A)(i) permits 10 depositions by each side. While the parties recognize that
 12 more than 10 depositions may be required, they are unable, at this time to indicate how many
 13 depositions may be necessary and request leave to submit a stipulated request for an expanded
 14 number of depositions when they are better able to establish that number.

- 15 **f) Any other orders that the court should issue under Rule 26(c) or under Rule**
 16 **16(b) and (c).**

17 The State Defendants and Defendant Linda J. White, M.D. take the position that they have
 18 not received proper notice in the complaint, so they want a ruling on the sufficiency of the
 19 complaint before proceeding with extensive discovery.

20 Plaintiff takes the position that discovery should be allowed to proceed while the
 21 dispositive motion is pending.

22 **II. DISTRICT OF NEVADA, LOCAL RULE 26-1(e)**

23 **1) Discovery Cut-Off Date.**

24 State Defendants appeared on July 12, 2013 by filing a Motion to Dismiss. ECF Doc. 10.
 25 Defendant Linda J. White, in her official capacity, appeared on August 1, 2013 by filing a Joinder
 26 with supplemental briefing to the State Defendants' Motion to Dismiss. ECF Doc. 17. Plaintiff
 27 proposes a discovery cut-off date of **June 30, 2014**. Assuming this discovery cut-off date is
 28 ordered by the Court, it would permit **377 days** of discovery, measured from the first date State
 Defendants appeared (July 12, 2013) to the proposed discovery cut-off date (June 30, 2013).

1 **2) Amending the Pleadings and Adding Parties.**

2 Plaintiff anticipates further amendment of the operative complaint to include an EMTALA
3 claim and that additional amendments may be necessary following discovery productions. The
4 liability of additional unnamed individuals may be revealed through such discovery. Assuming the
5 cut-off date for filing amended pleadings is 90 days prior to the close of discovery, and discovery
6 closes on June 30, 2014, the amendment of pleadings cut-off date would be **April 1, 2014.**

7 **3) Fed. R. Civ. P. 26(a)(2) Disclosures (Experts).**

8 Assuming the cut-off date for filing expert disclosures is 60 days prior to the close of
9 discovery, and discovery closes on June 30, 2014, the expert disclosure cut-off date would be **May**
10 **1, 2014.** Assuming the cut-off date for filing rebuttal expert disclosures is 30 days prior to the
11 close of discovery, and discovery closes on June 30, 2014, the rebuttal expert disclosure cut-off
12 date would be **May 30, 2014.** A separate deadline of **July 30, 2014,** is proposed for the
13 completion of depositions of experts.

14 **4) Dispositive Motions.**

15 Assuming the cut-off date to for filing of dispositive motions is 30 days after the close of
16 discovery, and discovery closes on June 30, 2014, the dispositive motion cut-off date would be
17 **July 30, 2014.**

18 **5) Pretrial Order.**

19 Assuming the Joint Pretrial Order shall be filed not later than 30 days after the date set for
20 filing dispositive motions (July 30, 2014), the Joint Pretrial Order would be due **August 29, 2014.**
21 In the event dispositive motions are filed, the date for filing the joint pretrial order shall be
22 suspended until 30 days after decision of the dispositive motions or further order of the Court.

23 **6) Fed. R. Civ. P. 26(a)(3) Disclosures.**

24 The parties will exchange initial disclosures on **September 23, 2013.**

25 DATED: September 3, 2013

Respectfully Submitted,

26
27 By: /s/ "Mark E. Merin"
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Attorneys for Plaintiffs

DATED: September 3, 2013

Respectfully Submitted,

/s/ "Linda C. Anderson"

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Attorneys for State Defendants

DATED: September 3, 2013

Respectfully Submitted,

/s/ "Kevin R. Lazar"

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Attorneys for Defendant
LINDA J. WHITE, M.D.

1 IT IS SO ORDERED.

2 DATED:

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PEGGY A. LEEN
6 UNITED STATES MAGISTRATE JUDGE
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